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File No. O Societies Regn./43

A **BRANCH**

Subject:-

Opinions Under the Societies Registration Act 1860

P 10/5

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C O N T E N T S

Legal Department File No. O.Societies Regn./1943.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Societies Registration Act,1860.	
1.	795/2-2-43.	Questions (1) Whether in view of the fact that Government has been paying an annual grant to the Association equal to 50% of its admitted expenditure on the nursing arrangement at St.George's Hospital and also has a vested interest in the buildings of the Association which have been built on Government land and presumably with Government grants the Association can get the objects of the Association modified under section 12 of the Act, without the concurrence of Government so as to exclude St.George's Hospital entirely from the benefits of the funds of the Association. (2) Whether in the case, of major change of the nature proposed which will effect even the name of the Association the proper course would not be to dissolve the existing Association with the concurrence of Government under sec,13 of the Act. (3) If the reply to question (1) above is in the affirmative whether the position outlined in rule 2 under sec.IV Estimates and Accounts of the Rules and Regulations of the Association will in any way be affected as under rule 10 under section II-Constitution and Powers of the committee any alteration in the rules and regulations is subject to the approval of Government . (4) Whether an injunction can be obtained from court preventing the committee from withdrawing it nurses in contravention of the first declared object of the Association without either a mandate from the subscribers or the approval of Government and	

(5).....

(5) Whether the ammulated balances of past years can be devisted by the existing Nursing Assoication when there is a strong presumption that they were subscribed by people in the belief that they were meant for the provision of the nurses in St. Georges Hospital. 1-6

The Association may be at liberty to dispose with the services of the individual members of its staff, it must maintain a nursing staff for the hospital until the objects of the Association are attend-

Question whether the above view is correct. 7-8

EXH.12/7/

P.H.B 20/7

NWCS 20/7

Office of the R.I.A.

The St.George's Hospital Nursing Association, Bombay, has sent the following letter to the Surgeon General with the Government of Bombay:-

I have to point out that the first object of the Association as set out in clause 2(a) of the Memorandum of Association reads as follows:-

"To provide and maintain the Nursing Staff of St. George's Hospital, and a body of trained nurses for employment in Bombay and elsewhere in private cases or otherwise."

Your contention that it is difficult to reconcile the Resolution of My Committee referred to in my letter No.2281 of the 15th Instant with the objects of this Association cannot be accepted and is contrary to the advice obtained by my Association in 1939. I would add that the Association was then advised that the objects in the clause which I have quoted above are quite distinct and they can be carried on independently of one another and one or more can be abandoned or concentrated upon to the exclusion of the others as the circumstances seem to require.

With reference to the last paragraph of your letter, I would draw your attention to the fact that Rule 10 of Part II of the Rules and Regulations of the Association only requires the approval of Government when it is sought to effect any change in the Rules and Regulations of the Association. At present it is not contemplated that the Resolution of my Committee will necessitate any change in such Rules and Regulations. I have also to draw your attention to the fact that should it be deemed necessary to alter, extend or abridge the objection of the necessary the same will be effected in accordance with section 12 of ~~approval of Government to amend~~ the Societies Registration Act for which purpose the approval of Government is not required.

Later the Association sent another letter to the Surgeon General stating that it intended to give one month's notice to every member of the Nursing and Menial Staff of the Association to the effect that his (or her) services would not be required after 31st March 1943. Five questions arising out of these two letters are submitted to the R.I.A. for his opinion.

(1) Whether in view of the fact that Government has been paying an annual grant to the Association equal to 50 per cent of its admitted expenditure on the nursing arrangement at St.George's Hospital and also has a vested interest in the buildings of the Association which have

been.....

been built on Government land and presumably with Government grants, the Association can get the objects of the Association modified under section 12 of the Societies Registration Act, without the concurrence of Government so as to exclude St.George's Hospital entirely from the benefits of the funds of the Association.

2) Whether in the case of a major change of the nature proposed which will effect even the name of the Association, the proper course would not be to dissolve the existing Association, with the concurrence of Government under sectio 13 of the Societies Registration Act.

(3) If the reply to question (1) above is in the affirmative, whether the position outlined in rule 2 under section IV Estimates and Accounts of the Rules and Regulatio of the Association will in any way be affected, as under ru 10 under section II- Constitution and Powers of the Committe any alteration in the rules and regulations is subject to the approval of Government.

(4) Whether an injunction can be obtained from Court preventing the Committee from withdrawing its nurses in contravention of the first declared object of the Associatio without either a mandate from the subscribers or the approva of Government; and

(5) Whether the accumulated balances of past years can be diverted by the existing Nursing Assocaition when there is a strong presumption that they were subscribed by people in the belief that they were meant for theprovision of the nurses in St.George's Hospital.

The St.George's Hospital Nursing Association is an Association registered under the Societies Registration Act, 1860. The objects of this Association as stated in clause 2 of the Memorandum of Association are as follows:-

(a) To provide and maintain the Nursing staff in the wards of St.Georges Hospital, and body of trained Nurses for employment in Bombay and elsewhere in private cases or otherwise.

(b).....

(b) To take over the building known as the Private Nursing Quarters in the groundsof St.George's Hospital and the furniture and fittings belonging thereto, and the provident and Middleton Memorial Funds and all other property and liabilities of the St.George's Hospital Nursing Fund, with power to maintain, alter or enlarge the Private Nursing Quarters, or otherwise improve and increase the accommodation of the Nurses, Pupil-nurses and Probationers. And to borrow or secure the paymentof loans in such manner as the Association may think fit.

(c) To Establish and support a Provident Fund for the benefit of the Nurses.

(d) And to do all such other things as are incidential or conducive to the attainment of the above objects.

Section 12 of the Societies Registration Act,1860, makes provision for alteration, extension or abridgement of purposes Power is given by that section to the Association to alter, extend or abridge thepurposes whenever it appears advisable. No limit seems to be set to the alteration or abridgement so lon as the purposes remain within the scope of the Act. Nor is it necessary to obtain Government's sanction to the abridgement or alteration. On the other hand section 12 provides for an elaborate procedure for amendment of the purposes. The governing body of an association is first to submit the proposition to the members of the Society in a written or printed report and is to convene a special meeting for consideration of the proposition. Secondly, theproposition is not to be given effect to unless the report has been delivered or sent by post to every member of the Society 10 days previous to the special meeting. Thirdly, it is necessary that such proposition receive the assent by vote of three-fifths of the members. Fourthly, the decision must be confirmed by the votes of three fifths of the members present at a second special meeting convened by the governming body at an interval of onemonth after the former meeting. Without abridgingor altering thepurposes in the manner prescribed by section 12, it seems illegal for the Committee to give notice to the Nurses. Until the purposes are amended the Association must continue to provide for the Nursing Staff. After suitable amendment the Association may cease to make such provision. For amendment of thepurposes Government sanction is not necessary.

Regarding.....

Regarding the second question it is not for this Department to say whether the proper course would be to dissolve the Association. Dissolution is legally possible under section 13 of the Act provided Government consents. That section provides that if there is a dispute the affairs of the Association may be adjusted by reference to a Civil court. In the circumstances of this case that step might be desirable for the Court might allot some of the funds for the maintenance of the Nursing Staff of the St.George's Hospital. But it is for the administrative department to consider whether they should urge dissolution upon the Association. It cannot be compelled to dissolve itself.

There is then the third question. Under section 2 of the Act a copy of the Rules and Regulations of the Society are to be filed with Memorandum of Association. The rules and regulations of the present Association are given in Appendix of the Rules and Regulations of the St. George's Hospital. By these Rules and Regulations Government is given certain powers in the affairs of the Society For example, rule 10 in the section headed "Constitution and Powers of the Committee" provides that any alteration in the rules and regulations shall be subject to the approval of Government. Further by rule 3 in the section headed "Estimate and Accounts", a copy of the estimate is to be submitted to the Government through the Surgeon General and Government if it thinks fit, may alter or disallow such estimate or any portion thereof so far as it relates to the Hospital Nursing Staff and return the same for amendment. The Committee shall thereupon forthwith proceed to amend such estimate and shall resubmit it as amended to Government. Rule 5 in the same section further provides that a supplementary estimate shall be submitted to Government in the same manner as if it were an original estimate. It is clear from these provisions.....

provisions that the rules cannot be changed without Government's permission. Not it may be that consequent to the change over proposed, the Association may require new rules. The Government if it so wished may then show itself obstructive. But at this stage it is impossible to say definitely that the Association will require new rules. Further by virtue of the above provisions Government has also power to have the budget amended so far as it relates to the Hospital Nursing Staff. The Association proposes to dismiss the whole Nursing Staff. If that is done there will then be no estimate relating to the Nursing Staff. Provided that the purposes are amended to exclude provision for the Hospital Nursing Staff, it would appear that Government then loses the power that it possesses under the above rule. On the other hand so long as the present purposes of the Association remain unaltered, it would seem that Government can insist on provision, for the Hospital Nursing Staff. Rule 2 in the section headed "estimate and Accounts" provides that the estimate shall make provision for the fulfilment of the liabilities of the Association and for effectually carrying out its objects. In view of that rule Government could insist on provision for the Nursing Staff. If the Association failed to comply, it appears possible to approach the Civil Court.

Adverting to question 4, as pointed out in reply to the first question the Association appears to be acting improperly in threatening to dismiss the Nurses before the purposes are amended inaccordance with section 12. Until the purposes suitably amended it appears that the Association has no right to dismiss the Nurses. The Committee by itself cannot abridge or alter its purposes. It is a measure to be considered by al the members of the Association and before it can be effected threefifths of the members must agree. Rule 1 in the section headed "Constitution of the Association" defines membership as follows:/

"The Members of the Association shall consist of the mem for the time being of the Committee and the persons who have become Life Members as hereafter mentioned and thepersons,

firms.....

firms, companies and public bodies, who have paid subscriptions of Rs.10 or upwards towards the funds of the Association for the year expiring on the previous 31st March."

If the Committee without amending the purposes persists in its threat to dismiss Nurses it seems a fit case to approach the Civil Court for an injunction. For that purpose the Solicitor to Government may be consulted under rule 24 of Rules of the Conduct of the Legal Affairs of Government.

Finally there is the 5th question. The accumulated balances of the past years vest in the Association. If the purposes are properly altered or abridged under section 12 the Association can legally use these balances for its altered purposes.

The General Department has also raised a question about the European General Hospital Endowment Grant of Rs.3,000/- Presumably the question is whether that amount must continue to be paid to the Association. At present this fund vests in the Treasurer of Chaitable Ednowments and he is directed to pay the income to the Association. It is possible under section 5 of the Charitable Endowments Act,1890,to modify the scheme and have the income paid to some other body or paid to this Association only on certain conditions. But for that modification it appears necessary that the persons who made the original application under section 6 of the Charitable Endiuments Act,should consent. However, the facts necessary for an adequate consideration of this question have not been stated fully. Further it seems unnecessary at this stage to consider the question of this fund in these very urgent reference.

Sd/- P.N.M.
1/2/

Remembrancer of Legal Affairs.

U.R. to G.D.No.795 dated the 2nd Feb 1943.

It is observed in G.D. office note at page 107 ante that the Association may be at liberty to dispense with the cervices of individual members of its staff, it must maintain a nursing staff for thehospital until the objects of the Association are altered. A(E) agree with this view and further observes: "The Association seems to think that there are objects as set out in (a)(b),(c),and (d) of the Memorandum of Association. As long therefore as any part of (a) is retained the object in (a) is not altered. Surely however (a) is two separate objects. The arrangement (a) (b) ,(c), and (d) is only a convenient method of drafting. It was not necessary that each sub-para should contain one object only.". The R.L.A. is requested t state whether the view taken by A(E) is correct.

2. It is true that the objects of the Association as state in clause 2 of the Memorandum Association are specified in clauses (a),(b),(c), and (d). But the main objects of the Association are stated in clause (a); those stated in clauses (b),(c) and (d) are merely subsidiary intended to carry out the main objectes in clause (a). Evidencly the arrangement viz. clauses (a),(b)(c) and (d) is only a convenient method of drafting.

3. Clause (a) specified two subjects to provide and maintain (1) the nursing staff in the ward of St.George's Hospital and(2) a body of trained nurses for employment in Bombay and elsewhere in private cases.

Sd/R.T.E.

R.L.A.

Reply:-
The view taken by ~~the~~ A(E) is correct.

EKH.11/7/

Sd/P.N.M.11/3